

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ROBERT DEVINE,</b>	:	<b>CIVIL ACTION</b>
<b>Petitioner,</b>	:	
<b>v.</b>	:	
	:	
<b>KENNETH CAMERON,</b>	:	
<b>Superintendent, et al.,</b>	:	
<b>Respondents.</b>	:	<b>No. 09-171</b>

**ORDER**

**AND NOW**, this 25<sup>th</sup> day of August, 2015, having considered the Petition for Writ of *Habeas Corpus* filed by Petitioner (Docket No. 1), Respondents' Opposition (Docket No. 23), the parties' replies and surreplies (Docket Nos. 51, 54), U.S. Magistrate Judge Linda K. Caracappa's Report & Recommendation (Docket No. 55), Petitioner's Objections (Docket No. 58), the Respondents' Reply (Docket No. 61), Petitioner's Motion to Strike Respondents' Reply (Docket No. 62), Respondents' Opposition to that motion (Docket No. 63), Petitioner's Supplemental Authority (Docket No. 64), and the state court record, as well as Petitioner's Motion for Discovery (Docket No. 24), Respondents' Opposition (Docket No. 34), Petitioner's Reply (Docket No. 37), Magistrate Judge Linda K. Caracappa's September 10, 2010 Order granting in part and denying in part Petitioner's Discovery Motion (Docket No. 38), and all of the filings related to the request for reconsideration of that Order (Docket Nos. 40, 41, 42, 43, 44, 45, 46), it is hereby **ORDERED** that:

1. The Report & Recommendation and Magistrate Judge Linda K. Caracappa's September 10, 2010 Order granting in part and denying in part Petitioner's Discovery Motion are **APPROVED** and **ADOPTED**, except that as to the Report & Recommendation:

- a. The following two sentences are stricken from page 30: “In his habeas petition, petitioner does not refute that the sample from Ms. Walker was lost. Indeed, petitioner says that the trial court ‘reasonably concluded’ the sample was lost.”
- b. The date in the third sentence of the first full paragraph on page 44 is hereby changed from 1997 to 1993.
2. Mr. Devine’s Objections are **OVERRULED** for the reasons outlined in the Court’s Memorandum accompanying this Order.
3. Mr. Devine’s Petition is **DISMISSED** with prejudice.
4. Mr. Devine’s Motion to Strike (Docket No. 62) is **deemed MOOT**.
4. There is no probable cause to issue a certificate of appealability.<sup>1</sup>
5. The Clerk of Court shall mark this case **CLOSED** for all purposes, including statistics.

BY THE COURT:

S/Gene E.K. Pratter  
GENE E.K. PRATTER  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> A certificate of appealability may issue only upon “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A petitioner must “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Lambert v. Blackwell*, 387 F.3d 210, 230 (3d Cir. 2004). There is no probable cause to issue a certificate in this action.